



*Office of the Prosecuting Attorney*

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**DAVID G. GORCYCA**  
*Prosecuting Attorney  
County of Oakland*

**Deborah L. Carley**  
*Chief Deputy Prosecutor*

**MEMORANDUM**

TO: HOUSE JUDICIARY COMMITTEE


FROM: DAVID G. GORCYCA, Prosecuting Attorney

RE: PRELIMINARY EXAM PRESS CONFERENCE  
MAY 11, 2005

DATE: JUNE 14, 2005

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Attached is my prepared written statement provided to the press corps. during Attorney General Mike Cox's press conference held May 11, 2005.

  
DAVID G. GORCYCA  
Prosecuting Attorney

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Attachment

The Attorney General's "More Cops" proposal is a sound approach to an antiquated criminal process that causes a major drain on police, judicial and prosecutorial resources -- resources that are better spent fighting crime on the street, rather than in a pew in the courtroom hallway. "More Cops" is not about casting away a defendant's right purely for financial reasons. In fact, the preliminary exam hearing is a legal proceeding that is just not exercised by defendants in over 80% of the cases in Oakland County, and 75% of the time statewide.

Of the 6,126 cases that were scheduled for preliminary exam in Oakland County in 2004, only one-half of 1% were dismissed after a hearing, meaning 99.5% of the cases were bound over for trial on the original charge. A vast majority of those cases, however, never saw the inside of a courtroom.

By waiving the preliminary exam, the defense bar has rendered the process as obsolete and perfunctory in nature, except in all but the most serious of felonies. However, under the "More Cops" proposal, defendants are still entitled to a hearing in those most serious of felonies; basically, preserving the right to exam in the 20% or so of cases already going to a hearing.

Further, in 86% of the cases involving the less-serious felonies, the preliminary exam, again, is simply not a right exercised by the defense. These felonies waived without a hearing to Circuit Court are usually probationable offenses or subject to a diversionary program. Yet, the witnesses are required to appear. In essence, the "More Cops" proposal will place more police officers on the street and out of the courtroom. There will be more prosecutors trying cases, not placing waivers of exam on the record, and then informing victims and witnesses after sitting around in court for hours that, "Your testimony is not needed."

It is about time Michigan gets judicious with dwindling police and prosecutorial resources. Currently, thirty-eight other states do not provide for the preliminary exam phase or a similar

process. This proposal will save thousands, if not millions, of dollars in time wasted by police, prosecutors, court personnel and, most importantly, crime victims.

Again, what is important to note is that the "More Cops" proposal continues to grant the defendant a right to a preliminary exam in the most serious felony and capital cases. However, the reality of the situation is that the preliminary exam is a statutory right that is just not exercised in an overwhelming majority of felony cases. As a result, the process wastes police, witness, victim and prosecutorial time on proceedings that just never occur. In fact, in 1975, the Michigan Legislators recognized the preliminary exam process for misdemeanors as unnecessary and wasteful, and, therefore, eliminated them. "More Cops" will hasten the time cases will go to trial, reduce jail time and overcrowding, and allocate police resources where they are better utilized -- on the streets, providing public safety.

As Vice President of PAAM, our Association has made reform to the preliminary exam process a priority, and we applaud the Attorney General for taking the lead on this issue.